

been contradicted as to certain material points by the testimony of witnesses. This map was made at the *lowest stage of water ever known in the Mississippi river*, and as to this map, the Supreme Court of Tennessee said:

“Much stress is laid upon the chart made in 1874, under the direction of Col. Suter, and his interpretation of the topographical signs and tracings appearing upon it, tending to establish that at that time there was timber growing upon what is shown on the chart to be bars and banks in the river. Complainant also examined civil engineers, who undertook to interpret these maps and state what they showed in relation to accretions upon Dean’s Island and the width of the river at the time they were made. This evidence is not entitled to very great weight. The chart is not the result of a careful survey of the river and its banks, but, in the main, from an inspection of it made from the deck of a steamboat. It was a mere steamboat reconnoissance.” Pp. 116, 117.

And, again,

“Col. Suter does not testify from his personal recollection of the river and its banks. There was nothing about Dean’s Island to attract his special attention to it, and its banks were a very small part of the reconnoissance made by him. He had not been there for nearly thirty years, and could only testify what he understood the topographical signs upon the chart to mean. The civil engineers examined for complainant read these signs differently, and under their interpretation the chart tended to support the insistence of complainant that no accretions had formed on Dean’s Island at that time.” P. 119.

A map of this kind was referred to by this court in the case of *Moore v. McGuire*, 205 U. S., 214, 222, where it

was said that, although showing the channel west of a certain island, which the court in that case held to have been east of the island, and which is shown on the reconnaissance map as a sand bar, it said:

“But in any event it would hardly do more than confirm a conjecture suggested by other sources which we shall mention, that in some years the western passage was as good as or better than the more permanent one to the east.” P. 222.

It thus appears, that to undertake to establish the center of the bed of the river as it flowed in 1876, would be an almost hopeless undertaking. Witnesses living in the neighborhood who were available ten years ago say that the old banks cannot be located. After the avulsion waters for a long time covered the abandoned bed of the river, and when the current ceased to flow through it, the filling up process was rapid. Great forest trees cover parts of this territory, while, as stated in the opinion in 119 Fed. at 812, a portion of the land has been under cultivation for many years. The river bed of 1823 is capable of location, and no other bed can be determined with any sort of accuracy. These facts will be considered by this Court, especially when to adopt the river bed of 1823 as the true boundary line will give effect and force to the well-established rule governing reliction, and will restore to each state that which originally belonged to her and to her citizens.

CONCLUSION.

In conclusion, we respectfully submit,

1. That so far as the boundary line between Tennessee and Arkansas is concerned, it is the middle of the main

channel or main bed of the river, as defined in the treaty between the United States and Spain, in 1795, and as adjudged in *Cessill v. State*, 40 Ark. 501; *Wolfe v. State*, 104 Ark. 140; *Moss v. Gibbs*, 10 Heisk. 283; *Foppiano v. Speed*, 113 Tenn. 167; *State v. Pulp Company*, 119 Tenn. 47, and *Stockley v. Cissna*, 119 Fed. 812.

2. In any event, in the abandoned channel of the river, the point to be ascertained is the middle of said channel or bed, and not what was the line of steamboat travel immediately prior to the avulsion.

3. That by reliction, the lands formerly belonging to Tennessee and on the left side of the midchannel or the bed of the river, as shown in Humphrey's map in 1823, belong to the State of Tennessee, and those on the right belonging to it belong and should be adjudged as the property of the State of Arkansas.

4. That the river as it run in 1823 as shown by the Humphrey's map is the only feasible and practicable channel by which and from which the center line of the river can be ascertained and the boundary determined.

Respectfully submitted,

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